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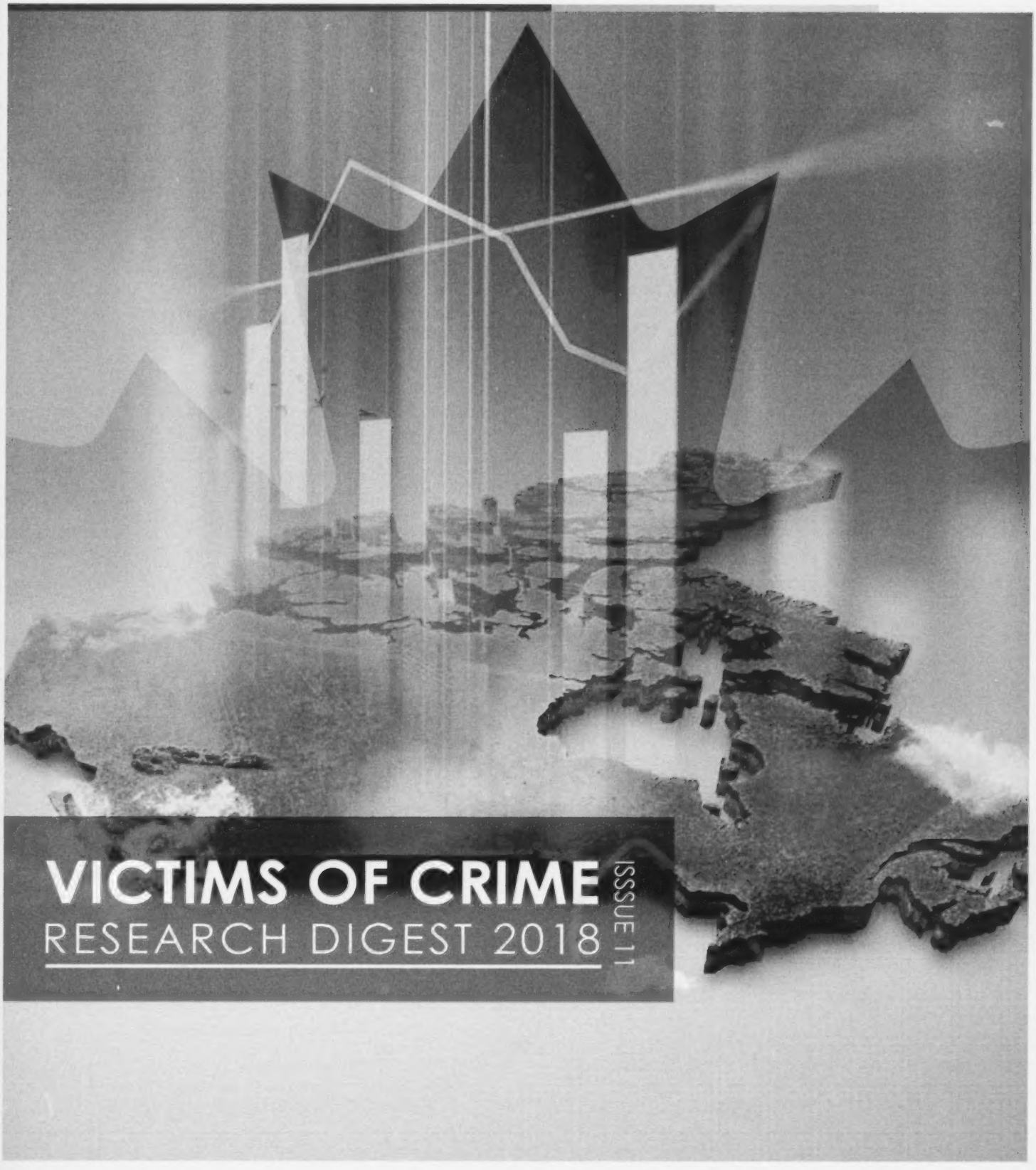

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INTRODUCTION

Welcome to Issue No.11 of the *Victims of Crime Research Digest*!

The theme of the 2018 Victims and Survivors of Crime Week (May 27 – June 2, 2018) is "Transforming the Culture Together." This theme recognizes that throughout Canada, countless dedicated professionals and volunteers work to create and implement policies and initiatives to help transform the culture of the criminal justice system. They also foster culture change by advocating for, and delivering, effective and efficient services to victims and survivors of crime.

Empirical research plays an instrumental role in transforming the culture of our criminal justice system by helping policy makers to:

- Understand how amendments to the *Criminal Code* and other federal legislation are implemented at the provincial and territorial level;
- Identify new and emerging issues;
- Measure changes in attitudes and behaviours of criminal justice professionals, as well as victims and survivors.

This issue of the *Digest* begins with a review of departmental research on the use of testimonial aids – tools that help witnesses testify in criminal proceedings. Thirty years after legislation first authorized their use, author Susan McDonald explores what we know and what more we need to learn about these important tools. The second article, written by Alisha Shivji and Dawn McBride, examines strategies victim services volunteers can use to cultivate compassion satisfaction, and avoid compassion fatigue and burnout. The article is informed by one author's personal volunteer experience, but will also resonate with those who have served in a professional capacity with victims. The third article, by Cynthia Louden and Kari Glynes Elliott, is a summary of a multi-year, multi-site study on the development of Child Advocacy Centres in Canada. The next article, by Jane Evans, Susan McDonald and Richard Gill, reviews a study of the experiences that crime victims and survivors have had with restorative justice in Indigenous communities. In the final article, authors Carly Jacuk and Hassan Rasmi Hassan survey the case law on third-party records from 2011-2017.

Over the past three decades, Canada has made significant advances towards creating a system that treats victims and survivors with courtesy, compassion and respect. While the research shows that some progress has been made, more must be done; legislation and policy alone cannot transform the culture of the criminal justice system. Victims and Survivors of Crime Week provides an opportunity to share promising practices, innovative approaches and lessons learned in our collective efforts to enhance access to justice for victims and survivors of crime. We hope that this issue of the *Digest* continues to challenge and inspire all of us working in the criminal justice system.

As always, we welcome your feedback.

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HELPING VICTIMS FIND THEIR VOICE: TESTIMONIAL AIDS IN CRIMINAL PROCEEDINGS

By Susan McDonald

Canada has included provisions in the *Criminal Code* allowing witnesses to use testimonial aids since 1988, when former Bill C-15 (*An Act to amend the Criminal Code of Canada and the Canada Evidence Act*) came into force. Further amendments came into force in 1999, in 2006 and most recently in 2015, with the *Victims Bill of Rights Act* (VBR).

Three decades of social-science research have helped improve our understanding of testimonial aids for both children and vulnerable adults, and clarified their practical role in the Canadian criminal justice system. This article provides an overview of research completed by the Department of Justice about the use of testimonial aids, and identifies further research that would improve our understanding of the challenges and successes thus far.

CHANGES TO THE TESTIMONIAL AIDS PROVISIONS IN THE *CRIMINAL CODE* SINCE 1988

There are three types of testimonial aids: a witness may testify from behind a screen, from outside the courtroom via closed-circuit television (CCTV), or alongside an accompanying support person. In addition to these traditional aids, the *Criminal Code* and the *Canada Evidence Act* also authorize publication bans and video-taped testimony, along with appointment of counsel to cross-examine a witness and orders to exclude the public from the courtroom. These measures, often included in broader discussions about testimonial aids, are considered in this summary.

Former *Bill C-2, An Act to Amend the Criminal Code (Protection of Children and Other Vulnerable Persons) and the Canada Evidence Act* (hereinafter Bill C-2) received Royal Assent on July 21, 2005. The Bill's *Criminal Code* amendments to facilitate witness testimony came into force on January 2, 2006. They were intended to provide greater clarity and consistency for the use of testimonial aids and other measures for witnesses under the age of 18 years. They made testimonial aids and other measures available to vulnerable adult witnesses for the first time.

The 2006 amendments also expanded the court's authority to appoint a lawyer to conduct the cross-examination of a witness where the accused is self-represented and the case involves either witnesses under the age of 18 or adult victims of criminal harassment. Under the amendments, testimonial aids are mandatory if requested by the witness.

The VBR came into force on July 23, 2015. Because of the VBR's amendments to the *Criminal Code*'s testimonial aids provisions, it became easier for a judge to order that a support person accompany an adult witness during testimony. The judge can now make such an order, upon request, on the basis that it would facilitate the giving of a "full and candid account by the witness of the acts complained of" (amended section 486.1(2) of the *Code*), or if it would otherwise be in the interest of the proper administration of justice.

Additional factors to be considered by the court in determining whether to make such an order include:

- Whether the witness needs the order for his or her security or for protection from intimidation or retaliation;
- Society's interest in encouraging the reporting of offences;
- Ensuring the participation of victims and witnesses in the criminal justice process (amended section 486.1(3) of the *Code*).

The court continues to have discretion to consider any other circumstance considered to be relevant, although it is now formulated as any other "factor" that the judge considers relevant (amended section 486.1(3) of the *Code*). The amendments granted similar discretion regarding the use of witness screens and CCTV.

RESEARCH THROUGH THE YEARS

The Department of Justice has conducted social science research into the victim-related provisions of the *Criminal Code* for decades.[1] This article focuses on studies and key findings related to testimonial aids. The article groups these studies primarily by method and data source (i.e. literature reviews, court observations, qualitative interviews, case-law review, surveys of criminal justice professionals and operational data from jurisdictions).

National data on criminal trials are collected through the Integrated Criminal Court Survey (ICCS), housed at the Canadian Centre for Justice Statistics (CCJS) at Statistics Canada. Unfortunately, national data on testimonial aids are not currently collected[2] and thus, little is known about their use in preliminary inquiries, at trial and – since the 2015 amendments – during sentencing.

Bill C-2 mandated a parliamentary review; after the provisions came into force in 2006, the Department of Justice discussed the collection of data on the use of testimonial aids with each province and territory. Saskatchewan and Newfoundland agreed that victim services workers would enter relevant information in a form prepared by Justice Canada officials, then submit completed sheets for analysis about every six months. Justice Canada's Research and Statistics Division would share this analysis with the Federal/Provincial/Territorial Working Group on Victims of Crime. Despite using the same coding form, there were differences in how the data were captured (e.g. what additional information was provided in the Notes section and how many questions were left blank) and because of this, there are differences in how the data are reported. Prince Edward Island agreed to track the use of testimonial aids during the first six months of 2008 using its own system.

Results from Saskatchewan, Newfoundland and Labrador, and Prince Edward Island

Saskatchewan collected data from January 2008 to September 2015 about 286 children (aged 4 to 17 years) and 68 vulnerable adults (aged 18 to 87 years) who testified during preliminary inquiries and criminal trials, and one case where the age of the witness was not identified.[3] Most of the victims were female (84%).

The testimonial aid most commonly requested was a support person (335 times, 94% of witnesses), followed by a screen (202 requests). There were 103 requests enter to videotaped testimony, but few requests for CCTV or to exclude the public from the courtroom. In 45 cases, victim services workers indicated that testimonial aids would have been useful, but had not been requested (and provided no explanation about why they not been requested).

Newfoundland and Labrador collected data from February 2007 to March 2010. During this time, victim services in the province received 1,118 referrals for child victims and witnesses. Information on testimonial aids was collected in 94 of these cases.[4] Of these cases, the 92 children who

1 During the 1980s and 1990s, notable research was conducted about: the sexual offences established in 1983, the use of the victim surcharge, the victim impact statement, and the offence of criminal harassment established in the mid-90s. Justice Canada only conducted research on witness screens, CCTV and support persons after the 1999 amendments, although the Department conducted significant research on child testimony and services during the 1980s and 1990s. Law professor Nick Bala et al. (2001) assessed the impact of Bill C-15 on the facilitation of children's testimony; more recently, law professor Larry Wilson (2017) examined the challenges of child testimony.

2 CCJS is currently reviewing the ICCS and anticipates the future collection of testimonial aids data.

3 As there are many cases in which information on testimonial aids is not collected, the cases presented below are not an accurate reflection of all the children and vulnerable adults who may ultimately testify in Saskatchewan.

4 Not every referral received would proceed to a trial, nor would every child witness necessarily request a testimonial aid. Even with those qualifications, it is likely that this number is an undercount of requests for testimonial aids.

testified ranged in age from four to 18 years and two-thirds were girls (67%). The cases include one adult and one witness whose age was not indicated.

The testimonial aid most commonly requested was a support person (77% of cases, n=72). Among these, the Crown made the request in almost all of the cases (96%, n=69) and another individual[5] made the request in the remaining cases (4%, n=3). A screen was requested in 69% of cases and CCTV in 14%. An order for the exclusion of the public was requested in 10% of cases. One case involved videotaped testimony and one application for videotaped testimony was denied. No cases involved counsel appointed for cross-examination. Victim services workers indicated that testimonial aids would have been helpful in an additional 19 cases.

Prince Edward Island collected data from January through June 2008. During this time, 39 cases involved child testimony and 3 involved the testimony of a vulnerable adult: 13 of these cases proceeded to a preliminary inquiry (n=6) or a trial (n=7). Two thirds of the witnesses were female (n=28) and one third was male (n=14). There were 23 guilty pleas, most being entered before trial, and two being entered after the preliminary inquiry.[6] In 14 of these cases, pleas were entered early in the case and testimonial aids were not discussed. The use of testimonial aids varied in the remaining cases. In some, they were discussed, but the victim did not want to use them. In others, they were used and helped witnesses provide full and candid accounts of the alleged incidents. Victim services workers identified one case where the victim would have benefitted from a testimonial aid. No request for a testimonial aid was denied.

5 Another individual included: victim services, the victim or the victim's family.

6 A preliminary inquiry is held to determine if there is enough evidence for an individual to be tried on their charges, and can only happen when the accused is charged with an indictable offence. An accused can choose to plead guilty at any time.

Literature Reviews

In the early 2000s, the Department contracted clinical psychologist Dr. Louise Sas to undertake a review of the research literature on the cognitive, language and memory development of children in the context of criminal proceedings. Dr. Sas' report (2002) provides valuable information about the importance of appropriate questioning, proper support for children when testifying and specialized training for criminal justice professionals.

Osgoode Hall Law School Professor Jamie Cameron's seminal 2004 report *Victim Privacy – The Open Court Principle* reviews the legal literature on publication bans in Canada and elsewhere, and traces the development of relevant case law at the Supreme Court of Canada. The report devotes an entire chapter to sexual violence and examines the fundamental principle of open court. The report posits that the open court principle is critical to our democracy and to confidence in the rule of law, while also questioning whether "victim privacy, and the need for anonymity in particular, is justified by the nature of the offence, or should [it] instead be regarded as a remedial measure to address the chronic under reporting of sexual offences and encourage victims to trust the system."

The Department contracted another review of literature a decade later. *The Examination and Cross-Examination of Children in Criminal Proceedings: A Review of the International Literature* (2014) by Tamara Jordan examines how the criminal justice systems of Australia, New Zealand, England and Wales, the United States, South Africa, Israel and Norway handle the examination and cross-examination of child witnesses. The author identifies five major developments for child witnesses: testimony video-taped before trial, intermediaries used to improve communication between child witnesses and courts, prohibitions on the improper questioning of child witnesses, special examiners to record child testimony, and representation for child witnesses in court.

Court Observation Studies

In 2001, BOOST: Child Abuse Prevention and Intervention (formerly the Toronto Child Abuse Centre, TCAC) conducted a court observation study to determine the influence of Bill C-15 on the testimony of children in Toronto's Old City Hall's "J-Court," a child-friendly courtroom. The study found that although testifying in court remained a difficult task, the children fared well with the aids authorized by Bill C-15 (see BOOST 2001).

After Bill C-2, a similar court observation study was conducted involving both BOOST (Toronto) and the Zebra Child Protection Centre (Edmonton). Both provided strong support services to child victims and their families. To collect information, the two organizations trained volunteers to observe court hearings from June 2006 to April 2008: 57 cases in Edmonton and 67 cases in Toronto.

In Edmonton, the testimonial aids used most often were a support person to escort the child to the witness stand (91% of cases) and remaining with the child at the stand (85%). A support person was requested for 88% of the child witnesses and ordered by the judge 86% of the time. Other common testimonial aids included witness screens in 85% of cases, publication bans in 78% of cases, and voice amplifiers in 77% of cases.[7] CCTV was used in 25% of the cases.

In Toronto, the testimonial aid most commonly used was an order for the exclusion of the public (91%). Other common testimonial aids included publication bans (70%), voice amplifiers (65%) and witness screens (40%). CCTV was used in 24% of cases. A support person was requested for 64% of the child witnesses and ordered by the judge in 54% of cases.

Surveys of Criminal Justice Professionals

In the first years of the Federal Victims Strategy (then called the Victims of Crime Initiative), the Department of Justice launched a large, multi-site research project to document the perspectives of a range of key stakeholders, as well as victims, about their awareness and understanding of victim-related *Criminal Code* provisions. *A Multi-Site Survey of Victims of Crime and Criminal Justice Professionals across Canada* (PRA 2006) was conducted before Bill C-2 was introduced, and at a time when the use of testimonial aids was limited, both by legislation and by the culture of the adversarial criminal justice system. Applications for testimonial aids prior to Bill C-2 often required evidence establishing that the child witness needed the particular aid to provide a full and candid account of their evidence.

The 2006 study found that among testimonial aids designed for child witnesses and those with a mental or physical disability, screens appeared to be the most popular among Crown prosecutors, defence counsel and judges. Many Crown prosecutors explained that they do not request an aid without a compelling reason to do so, and many reported having as much success without the aids as with them. Judges were careful to emphasize the need for Crown prosecutors to present compelling evidence that the aids were necessary, as well as the need to ensure that relevant *Criminal Code* criteria are met. Furthermore, a few judges indicated during interviews that they wondered about the actual effectiveness of testimonial aids. A proportion of defence counsel surveyed[8] expressed serious reservations about testimonial aids, arguing that they violated fundamental principles of the criminal justice system intended to protect the accused.

In 2008, Bala et al. (2010) surveyed judges (n=39) in four jurisdictions about their awareness and understanding of

7 Microphones, booster seats and comfort objects (e.g. teddy bear, blanket) are not recognized as testimonial aids in the *Criminal Code*. As with support dogs, however, a judge has the discretion to permit them in the courtroom under the inherent administration of justice jurisdiction – the trier's efforts to ensure that the witness feels as safe as possible and can provide a "full and candid account" of their experience.

8 The proportion of defence counsel who would object to the use of an aid varied depending on the testimonial aid being requested. For example, 30% would say no to the use of a support person; 39% would say no to screens; 50% would say no to CCTV and 69% would say no to video-taped evidence. See PRA 2006, 89-93.

the Bill C-2 changes. A majority of respondents (88%) said they were familiar with the amendments and three quarters said they had reviewed applications for testimonial aids. Respondents indicated that applications involving children were almost always successful, and that those involving vulnerable adults were often successful. Half of all judges surveyed reported technical or logistical challenges with CCTV. Overall, the judges surveyed were very positive about the provisions introduced through Bill C-2.

As part of a 2012 evaluation of the Federal Victims Strategy, the Department of Justice commissioned a follow-up to the multi-site study. Rather than telephone and in-person interviews, the follow-up study involved an electronic survey (e-survey) of police officers, Crown attorneys and victim services workers.[9] The results suggest that knowledge of victim issues grew considerably between approximately 2002 and 2012. Respondents to the follow-up survey indicated that awareness and knowledge of relevant legislation and of victims' role in the criminal justice system had improved between 2002 and 2012. This perception was strongest among victim services workers (Department of Justice Canada 2016).

The survey asked Crown attorneys about the frequency of their requests for testimonial aids for victims. More than half of Crown respondents (53%) said they often request a support person for victims who testify. One quarter to one third of Crown respondents said they rarely request other aids (video-taped statements, witness screens, CCTV). The majority of Crown respondents (68%) noted obstacles to requesting testimonial aids, particularly for victims under the age of 18 years: the application process is rigorous and some judges have reservations or express concerns about impact on witness credibility. Some Crown respondents mentioned other barriers, such as defence objections, as well as technology and facility limitations. A new version of the e-survey, with questions added about the changes introduced by the VBR in 2015, was conducted again in early 2018.[10]

Case Law Reviews

While a review of case law is considered legal research, it can help to understand the judiciary's interpretation of legislation and to examine any constitutional challenges. Reviews of case law were part of both the Bala et al. (2010) report and Ainslie (2013) study on testimonial aids for vulnerable adults. Justice Canada continues to monitor relevant case law and completed an update in early 2018. It appears that applications for vulnerable adults are relatively rare – particularly "discretionary" applications – at least in comparison to applications for children, although these applications are generally successful. Higher-court interpretations of the various legislative provisions have also been generally favourable: applications were granted and unnecessary obstacles to testifying were removed.

Qualitative Research

One research project (Epprecht et al. 2005) involved the analysis of anonymous letters written by children aged 7–12 and their parents who participated in the Child Protection Program (CPP) in the late 1990s in St. John's, Newfoundland and Labrador. The letters enabled participants to comment on the program, as well as on their interactions and experiences with the criminal justice system. Many of the concerns raised by participants – such as its adversarial nature and delays – continue to be problematic and stressful for children, youth and their families. Improved accessibility of testimonial aids, the provision of victim support services and the development of Child Advocacy Centres across the country facilitate the participation of children and youth in legal processes.

9 A total of 1,155 Crown attorneys, police officers and victim services providers responded to the e-survey.

10 Findings on this survey will be forthcoming.

In 2009, Charlotte Fraser and Susan McDonald interviewed 12 victim services providers about their experiences with clients suspected of suffering from Fetal Alcohol Spectrum Disorder (FASD).[11] All respondents agreed that FASD is an important issue. They also agreed that those involved in criminal courts generally had an inadequate understanding of FASD; most did not recognize that testimonial aids could help witnesses affected by FASD. The respondents recommended appropriate training for all justice professionals. The respondents also indicated that the strategies identified for working with clients who suffer from FASD could be used for clients with communication or learning challenges.

In 2012, Pamela Hurley interviewed Crown prosecutors, as well as victim advocates working with vulnerable adults, about the use of testimonial aids. The experiences and perceptions of participants varied considerably; some of this variation appears to correlate to community size and location (Hurley 2013). Participants identified many issues related to justice officials' lack of understanding and knowledge about vulnerable witnesses, including: the impact of trauma and sexual victimization on witness participation, mental health, meeting the needs of and working with people with disabilities, and how a disability can impact witness participation in the criminal justice system. Participants called for the removal of barriers affecting traumatized, intimidated or vulnerable witnesses. Victims and witnesses who are reluctant to report violent crimes may be more likely to come forward if testimonial aids were certain to be available.

As part of the 2011 *Evaluation of the Federal Victims Strategy* (Department of Justice 2011), a specific study was completed in 2009 on the use of the Victims Fund to support the implementation of Bill C-2. The study focused on equipment purchases, such as screens and CCTV systems that enhanced the capacity of provinces and territories to implement the amendments, along with related expenditures, such as training and other supports. The evaluation concluded that the Fund increased the capacity of the jurisdictions to provide a greater number of higher-quality testimonial aids to vulnerable witnesses.

Since 2010, the Department of Justice has commissioned a number of small research projects related to specific testimonial aids; most involve in-depth interviews with key stakeholders. McDonald and Ha (2015), for example, examined requests in the territories for public exclusion orders and for the appointment of counsel when a self-represented accused may need to cross-examine witnesses. Researchers undertook qualitative, in-depth interviews with Crown prosecutors, as well as Crown Witness Coordinators (CWCs) across the north. The interviewees acknowledged that applications for public exclusion orders were rare, because of the need to demonstrate that no alternative was available. All of the Crown prosecutors and CWCs who had experience with applications for appointment of counsel indicated that these applications were always granted, although they often led to adjournments to retain counsel – a difficult challenge for circuit courts.

Another research project (Hurley 2015; Hickey 2016) focused on the use of CCTV in Ontario's West Region in 2012. The project involved in-depth, semi-structured interviews with 15 child and youth victim/witnesses who had testified in court, along with 13 of their parents. The project also involved separate e-surveys completed by 47 Crown prosecutors and 18 victim services workers. All child and youth interviewees found CCTV beneficial and appreciated the support provided by victim services and Crown prosecutors. They, along with their parents, found cross-examination, delays, and the length of time for the case to reach a conclusion extremely difficult and stressful. The author noted that the use of CCTV could not insulate children and youth from these negative impacts (Hurley 2015, 8). Other research has found that cases involving child victims should be expedited (e.g. Sas 2002). Waiting for the trial and delays remain serious issues and are key concerns among children, youth, and their parents (Hurley 2015; Hickey 2016).

11 Due to the difficulties and high cost associated with accurately diagnosing FASD, many sufferers are never diagnosed.

A small study (Ha and Ndegwa 2015) in Canada replicated work done by Jones et al. (2010) in the US. Researchers reviewed media reports about criminal cases involving children and youth, that had publication bans in place. The research investigated whether the media reports revealed information that could inadvertently identify victims. Of the 90 articles reviewed, almost a quarter (23%) contained identifying information. The identifying information reported most often was the name of the child's school, church or day care (33%), the child's street or address (29%), and the full name of non-offending relatives (24%). The full name of the victim was included in four out of the 21 articles that contained identifying information (23%). More than half of the articles did not mention whether a publication ban was in place (57%); however, 41% of the articles did specify that there was a publication ban. Seven of the articles indicating that a publication ban was in place contained identifying information, including the home address of the victim or the accused (full or partial), name/address of daycare, and partial name of victim (e.g. "baby Alison").

As referenced earlier, Jamie Cameron's (2004) report on victim privacy and the development of case law on publication bans remains a strong treatise on this area of law. Recent news, however, that Google searches produce links to court decisions subject to publication bans raise questions about the utility of publication bans in the Internet age.[12]

An interesting development is the increased use of support dogs with children and other vulnerable witnesses (see McDonald and Rooney 2014). Support dogs are not new in US courts, although they are still relatively novel in Canada and little case law exists on decisions to permit or deny such applications. Justice Canada will continue to work with jurisdictions to keep abreast of developments in this field.

CONCLUSION

In Canada, testimonial aids have been available since 1988 on a case-by-case basis, and presumptively since 2006 for children. National data on the use of testimonial aids in criminal proceedings do not exist, although changes to the ICCS are coming, and basic data will be collected. Justice Canada is most interested in the filing and outcome of applications for testimonial aids, and in identifying remaining barriers to their use, rather than in raw data about the number of aids used in a given time period.

It is generally accepted that testimonial aids facilitate witness participation and serve to minimize the stresses associated with testifying in criminal proceedings. Testimonial aids, however, do not protect children, youth and vulnerable adult witnesses from the negative impacts of vigorous cross-examination by defence counsel, or from the lengthy periods needed for cases to be decided.

National data about the use of testimonial aids during preliminary inquiries, trials and sentencing would help identify barriers to their use across the country. These barriers include a lack of equipment, defence objections and the denial of applications for vulnerable adults. Additional research on the criminal justice system experiences of child and youth victim witnesses, as well as those of vulnerable adults, would help to clarify issues and identify potential solutions. Very little research incorporates the experiences of young and vulnerable witnesses in Canada; these experiences vary among and within jurisdictions. CCTV equipment, for example, is much more accessible in urban locations than in rural and remote communities. Finally, research is still needed to better understand the prevailing perspectives – particularly among defence counsel – on the use of testimonial aids.

12 See Andrew Duffy, September 25, 2017, Searching for news on Google can return victim and offender names under strict pub ban, *Ottawa Citizen*, Accessed January 17, 2018 at http://ottawacitizen.com/news/local-news/scope-of-potential-ban-breaches-of-secret-identities-through-google-search-broadens

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FROM TRAUMATIZED TO ENERGIZED: HELPING VICTIM SUPPORT VOLUNTEERS CULTIVATE COMPASSION SATISFACTION IN THE FACE OF CRISIS

By Alisha M. Shivji and Dawn L. McBride

In several provinces and territories in Canada, volunteers play a crucial role in victim services, as they assist police in supporting individuals affected by crime and tragedy.[1] The nature of this work involves exposure to a considerable amount of traumatic material—numerous accounts of domestic violence, sexual assault, kidnapping, robbery, suicide, and even death. Researchers have indicated that continuous exposure to the traumatic experiences of others has both positive and negative implications (Harr 2013, 75; McKim and Smith-Adcock 2014, 58; Radey and Figley 2007, 210). Compassion fatigue (CF), vicarious trauma, and burnout are constructs used to describe the psychological and emotional costs of aiding individuals who have experienced some form of crisis or trauma (Collins and Long 2003, 417-418; Figley 1995, 7-15; Newell and MacNeil 2010, 58; Salston and Figley 2003, 167). In bearing witness to the pain of others, it is not uncommon to experience stressful reactions (Figley 2002, 1435) and significant changes in cognitive, emotional, or behavioral functioning (Bride, Radey, and Figley 2007, 155). Although researchers have regularly emphasized the negative impact that stems from helping others in crisis, insufficient attention is placed on the unique rewards of the work (Radey and Figley 2007, 208). This contrast to CF is termed compassion satisfaction, and it is described as being "often overlooked" (Lawson and Meyers 2011, 164).

Within this article, the current status of compassion satisfaction (CS) in literature and practice is presented, particularly in the context of training provided to victim support volunteers in Alberta. Along with highlighting what seems to be an inadequate focus on CS, eight strategies are proposed that victim support volunteers can adopt to cultivate CS in their work.[2] It is hoped the information presented in this article can be integrated into victim services training in order to capitalize on the more energizing aspects of this work, sustain gratification in helping others to recover from crisis, and promote a more optimistic perspective by shifting the focus from being traumatized by this work to being energized by it.

COMPASSION SATISFACTION: IN RESEARCH AND PRACTICE

CS is defined as a feeling of pleasure acquired from the ability to effectively help others and make a positive mark in society (Stamm 2010). It denotes the positive feelings and energy derived from helping others to recover from crisis and trauma (Stamm 2002, 107-119). Researchers have stressed the importance of CS by identifying it as a contributing

1 In the Province of Alberta, for example, victim support volunteers function like other crisis workers and helping professionals as a first line of intervention for individuals affected by crime or tragedy. However, not all provinces and territories utilize unpaid volunteers to assist in providing services to survivors of criminal victimization. There are various service delivery models in place for the provision of victim services across Canada, some of which have paid staff and/or other professionals specifically hired to provide these services to the public. For more detail on the various service delivery models present across Canada, see Allen (2014).

2 The lack of information on CS in victim services training coupled with one author's personal struggle to maintain optimism in the role is what prompted this article's specific focus on cultivating CS in victim support volunteers. Although this focus stems from one author's personal experiences in the volunteer role (Shivji 2015, 40-46), it should be noted that the ideas presented in this article are widely applicable to other populations of crisis workers and helping professionals, and not necessarily limited to victim services.

factor to career longevity, strengthened resiliency, and sustained well-being (Radey and Figley 2007, 213), as well as a protective mechanism that mitigates the effects of CF (Conrad and Kellar-Guenther 2006, 1073; Phelps et al. 2009, 321; Samios, Abel, and Rodzik 2013, 612). Stamm (2010) has alleged that trauma workers who experience increased CS may feel energized by their work and believe they can continue to make a difference in the world. However, little research has utilized CS as a focal point (Lawson and Meyers 2011, 164; Radey and Figley 2007, 208) and the majority of studies in this area have examined CS secondarily to CF.

A similar trend appears to be evident in Alberta Victim Services training; the focus is often on traumatic rather than energizing effects. For instance, of the 35 standardized training modules released in 2011, only one aims to educate victim support volunteers about traumatic implications and to prevent CF. The module does not mention CS (Shivji 2015, 42-43). Therefore, it seems that while victim support volunteers learn about the risks of the job, they have minimal guidance about the unique benefits that the position can afford. Unlike trauma specialists and other relevant professionals, the volunteers may have limited access to educational materials and resources about CS and how it can apply to their work. Appropriate training could help the volunteers reduce CF and benefit from CS.

In the next section, eight general recommendations are offered for sustaining CS in Victim Services (and possibly other forms of work with survivors of crisis and trauma). However, it should be noted that these recommendations are based on the work and ideas of a limited group of researchers, primarily because the literature on CS is sparse and there is simply not enough material to consult in terms of how CS can be actively enhanced and maintained.

RECOMMENDED STRATEGIES FOR CULTIVATING COMPASSION SATISFACTION

Radey and Figley (2007) contended that certain steps could be taken to enhance CS; they recommended increasing positive affect, resources, and self-care to create a higher ratio of positive to negative experiences, and thus provide an ideal environment for CS to grow (211-212). The advent of CS may be further enhanced by witnessing growth and resilience in clients, bonding with colleagues who share a commitment to bring about positive change, and understanding the true value of the work being done (Harr 2013, 83). Building on the recommendations proposed above, the following are several preliminary strategies by which victim support volunteers (and other populations of crisis or trauma workers) may be able to cultivate greater CS in their work. These strategies are informed by an in-depth review of current literature on CF and CS, in addition to one author's personal experiences as a victim support volunteer in Alberta (Shivji 2015, 40-46).

Adopt an Active Coping Style

An active coping style entails the use of positive strategies for stress management (i.e. support seeking, leisure, and relaxation techniques) and an increased focus on problem-solving, as opposed to the enactment of negative coping strategies (e.g. alcohol and drug use, avoidance) and denial or ignorance of the problem (Kinzel and Nanson 2000, 130). The shift into a problem-solving mindset is considered by researchers to be a plausible tactic for dealing with symptoms of CF (Cicognani et al. 2009, 460; Dunkley and Whelan 2006, 453; Kinzel and Nanson 2000, 130). In fact, Dunkley and Whelan (2006) intimated that use of an active coping style involves the development of a keen capability to generate solutions (464), which increases the likelihood of success in countering the effects of CF. This resolution of CF is significant, as it opens the door for increased CS. By actively taking steps to reduce CF, victim support volunteers allow greater opportunity for CS to occur. Furthermore, the practice of actively constructing solutions to deal with stress may translate into an application of actively constructing ideas to enhance the positive and energizing feelings that arise from being able to help others recover from crisis or trauma.

Balance Your Life and Your Workload

Maintenance of a work-life balance is considered an important factor in promoting effective functioning and positivity in crisis and trauma work (Lawson and Meyers 2011, 167). Hence, volunteers who take time to develop healthy personal relationships and engage in fun or meaningful activities likely experience greater CS than

volunteers who focus primarily on their work. Indeed the provision of support and services to victims is a valuable effort, but in this process of helping others it becomes easy to neglect the wholeness of life and subsequently slip into a downward spiral of stress. However, by preserving a balance between their personal and professional lives, victim support volunteers can experience opportunities to remove themselves from the helping role and recharge (Harr 2013, 84). This not only cultivates positive energy within volunteers, but may also raise their capacities for CS.

In addition to managing a balance between work and life, volunteers may find it helpful to maintain a diversified workload. For instance, Radey and Figley (2007) asserted that caseload variety enhances CS through provision of increased chances for work-related success—conceivably when volunteers take on simple tasks and cases, along with the more challenging ones (212). Specific strategies for diversifying the workload in Victim Services may include taking on a variety of cases and equally dividing the number of hours spent on various tasks or sites (i.e. court support, call centre, site of the crime or tragic incident, home of the victim, etc.).

Be Positive

A strong sense of optimism appears to be the key to enhancing CS. With respect to the amount of patience and emotional energy required to effectively support victims of crime and tragedy, it is necessary for volunteers to have an "ongoing input" (Harr 2013, 83) of positive energy to sustain their ability to help—especially in the face of crisis or stress. Although it is easy to fall prey to the negativity that encompasses the position, victim support volunteers do hold the power to invoke positivity in their work. Keeping a journal of successes, reviewing progress made with victims, and remembering words of appreciation are all methods by which volunteers can boost optimism and discover CS (Radey and Figley 2007, 211).

Radey and Figley (2007) referenced the idea of positivity opening a wider array of thoughts and actions (209), thereby provoking additional approaches for working with clients—or, in the case of Victim Services, survivors of criminal victimization. In adopting a positive outlook, volunteers not only learn to develop new strategies for helping, but may also experience increased success in doing so. This improved capability to succeed in the helping role is likely to promote potential for CS. Samios et al (2013, 617-618), suggested that positive emotions ultimately build CS via positive reframing. Positive reframing refers to broadening the mindset to search for positive meaning, which allows events to be reinterpreted in a positive light (2013, 612). In Victim Services, positive reframing may direct volunteers to uncover greater value in their work and thus maximize the experience of CS.

Consistently Evaluate Your Levels of CS and CF

Newell and MacNeil (2010, 63-64) highlighted the need to evaluate CS and CF experienced by helpers regularly. Through regular monitoring of their CS and CF levels, such as self-report assessment tools designed for this purpose, victim support volunteers can easily recognize when energy is depleting and traumatic stress is increasing. This can in turn prompt action to reduce CF and enhance CS. Volunteers may also experience increased optimism in seeing their levels of CS rise—a process that is likely to instill greater motivation for continuing to serve in a helping role.

One method by which volunteers can evaluate their levels of CS and CF is the Professional Quality of Life Scale (ProQOL). The ProQOL is a self-report tool specifically designed to measure both positive and negative effects of trauma work (Stamm 2010). In addition to being the most preferred measure of CS and CF, the ProQOL is determined by researchers to be a highly valid and reliable test for individual experiences of CS, CF, and burnout (Adams, Boscarino, and Figley 2006, 107-108; Bride, Radey, and Figley 2007, 159; Jenkin and Baird 2002, 427; O'Sullivan and Whelan 2011, 313; Stamm 2010).[3]

3 For ease of access, a copy of Stamm's (2010) ProQOL can be retrieved from http://www.proqol.org/ProQOL_Test_Manuals.html.

Embrace Self-Care

Lack of self-care is hardly conducive to CS. Instead, researchers emphasized the regular practice of self-care to reduce CF and improve the chances of experiencing/building CS (Radey and Figley 2007, 210). For instance, victim support volunteers who neglect their own needs may observe a diminished capacity to function both personally and professionally, as their energy is drained and they may find it difficult to provide quality service and keep up with the demands of the position and everyday life (Radey and Figley 2007, 210). Thus, it is important to identify the need for personal rejuvenation and preserve a sense of well-being (Harr 2013, 83), as doing so increases room for CS.

Specific self-care strategies that volunteers may use to build CS include: actively maintaining good mental and physical health (i.e. establishing a healthy diet, exercising, regular medical checkups), spending time with loved ones, incorporating leisure time into their schedules, facilitating hope through spirituality or positive thinking, and maintaining boundaries to limit emotional involvement with victims (Harr 2013, 83-84). Enrolment in personal therapy is also a viable method for self-care, as it enhances resiliency and CS through the deeper processes of reflection and insight (Cummins, Massey, and Jones 2007, 43).

Practice Mindfulness

Kabat-Zinn (1990, 14) characterized mindfulness as "paying attention, in a particular way: on purpose, in the present manner, and nonjudgmentally". This process involves deliberate attendance to thoughts, emotions, and sensations associated with crisis and trauma work, and researchers have generally supported the use of mindfulness to reduce CF and promote well-being (Christopher and Maris 2010, 114). It is through mindfulness that victim support volunteers can learn to become aware of their experiences of CF and CS. Mindfulness can enable them to shift from feeling traumatized and depleted by the work to being resilient and energized in the helping role.

Pursue Knowledge

Another favorable medium for cultivating CS is the pursuit of intellectual resources through continuing education and training (Radey and Figley 2007, 212). While lack of competence in specific skills or knowledge may contribute to CF, efforts to gain experience and competence likely provide fresh perspectives that make handling the challenges of the job a smoother process (Harr 2013, 84). Improvements in skills and knowledge can lead victim support volunteers to experience greater success in their work, which may result in increased CS. Furthermore, Victim Services can assist volunteers in developing awareness of CS through the provision of specialized training on the unique rewards of helping.

Seek Social Support

One of the most consistent ideas in the literature to date is the link between social support and CS (Cicognani et al. 2009, 460; Conrad and Kellar-Guenther 2006, 1078; Killian 2008, 38-39; Radey and Figley 2007, 211-212). Harr (2013) described social support from family and friends as a method for finding "refuge from the emotional intensity of the work" (83). This disengagement from the stress of the job presumably strengthens the potential for CS.

In addition to seeking support from family and friends, victim support volunteers may benefit from mentoring and peer support meetings. Mentoring programs allow more experienced and resilient volunteers, who know how to actively counter CF and build CS, to share their knowledge and support less experienced peers to make the shift from traumatized to energized (Kulkarni et al. 2013, 467-468). Similarly, peer support meetings supply an outlet for volunteers to share techniques to improve their work with victims and increase their rates of success, which further augments CS. In this line of work, volunteers may also develop a tendency to diminish successes and accentuate more problematic cases (Radey and Figley 2007, 213). This persistent focus on the negative is grounds for heightened CF. Nevertheless, peer support meetings can provide volunteers with opportunities to share successes (Radey

and Figley 2007, 213) and receive positive feedback on their work, which boosts optimism and increases capacity for CS.

CONCLUSION

CS induces purpose, meaning, and hope in the face of challenges (Harr 2013, 82). It is a powerful capacity to feel energized and optimistic about the ability to make a difference in the lives of others and change the world. Jones (as cited in Harr 2013, 83) stated that perceiving positive change in another's quality of life results in fulfillment and motivation to continue in the helping role. Given the profound impact CS can have on victim support volunteers, it would be highly beneficial for them to be aware of how they can become energized by their work. The current approach of emphasizing the prevention of CF and neglecting the enhancement of CS does little to improve volunteers' abilities to capitalize on the rewards of helping. However, with increased knowledge and training on CS, victim support volunteers (and other populations of crisis and trauma workers) can effectively learn to cultivate greater CS in their work, which in turn may help them to sustain well-being and stay out of crisis as they help others to recover from trauma.

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UNDERSTANDING THE DEVELOPMENT AND IMPACT OF CHILD ADVOCACY CENTRES (CACS) IN CANADA

By Cynthia Louden and Kari Glynes Elliott

BACKGROUND

Child Advocacy Centres (CACs) and Child and Youth Advocacy Centres (CYACs)[1] are child-focused, facility-based programs in which representatives from many disciplines work together to conduct interviews and make team decisions regarding investigation, treatment and intervention in child abuse cases. CACs provide an array of services to improve the experiences of child victims and witnesses, along with their families, as they navigate various systems, including the child protection and criminal justice systems. CACs can also undertake research, and develop and provide training and public legal-education. In 2010, the Government of Canada announced funding through the Federal Victims Strategy (FVS) for the creation and enhancement of CACs across Canada. This funding – originally $5.25 million over five years (2010-2015) – has been increased to $12.25 million over five years (2016-2021).

The United States is a leader in the development of CACs and established its first centres during the 1980s. CACs seek to minimize system-induced trauma by providing a single, child-friendly setting where child/youth victims and witnesses, along with their families, can access services. It is believed that CACs may reduce the number of interviews and questions children are subjected to during the investigation and court-preparation processes.

The U.S. National Children's Alliance (NCA) established 10 standards that organizations must meet to become an accredited CAC. Accreditation and NCA membership opens up funding opportunities, as well as other benefits such as shared software for data collection and performance measurement. The 10 standards involve:

1. A multi-disciplinary team (MDT)
2. Cultural competency and diversity
3. Forensic interview
4. Victim support and advocacy
5. Medical evaluation
6. Mental health
7. Case review
8. Case tracking
9. Organizational capacity
10. A child-focused setting[2]

CACS IN CANADA

In Canada, the CAC model is a more recent development: the first Canadian CAC opened in Regina in 1997. As of 2017, 18 communities in Canada are operating CACs and approximately 15 other communities are exploring or developing the model.

1 This article will use the term CAC to refer to both CACs and CYACs. The content is drawn from a longer report on a five-year study of six CACs across Canada.

2 National Children's Alliance. 2017. "Standards for Accredited Members." http://www.nationalchildrensalliance.org/sites/default/files/downloads/NCA-Standards-for-Accredited-Members-2017.pdf [Accessed December 4, 2017].

GOALS AND MANDATE OF CACS

In general, CACs aim to address a lack of coordination between social services and the criminal justice system. Prior to CACs, victims were often interviewed multiple times by professionals untrained in child development and working for different agencies. Interviews and other aspects of investigations were carried out in locations, such as police stations, that were not child-friendly. Victims and their families complained of delays, lack of information and of being re-victimized by the process.

CACs coordinate services by bringing together professionals into a multi-disciplinary team (MDT) located in a single, child-friendly location. Interviews are usually conducted jointly by law enforcement and/or child protection professionals trained in both child development and forensic interviewing.

A key feature of many CACs is a victim advocate, who serves as a "point person" or navigator for victims and families. A victim advocate is involved throughout the entire process, ensuring a welcoming atmosphere, acting as the central point of contact for victims and their families, answering questions, providing referrals, updates, and information about cases, as well as liaising with other MDT members. In some cases, a victim advocate maintains contact with families after the case is completed.

DEPARTMENT OF JUSTICE CAC STUDY

In 2012, the Department of Justice Canada commissioned a five-year study of the development and operation of Canadian CACs. It was designed to measure client satisfaction with CACs and with criminal justice system processes, and to examine specific outcomes of the CACs. Proactive Information Services Inc, an independent firm, was contracted to develop tools such as interview guides, and to conduct interviews and collect data from six CACs.

The six CACs were selected to maximize diversity. The CACs selected reflect a variety of governance structures including stand-alone non-governmental organizations (NGOs), programs of established NGOs, and government entities; they also operate in different regions of the country and serve different populations. The six CACs studied were:

- Caribou Child and Youth Centre, Grand Prairie, Alberta
- Regina Children's Justice Centre, Regina, Saskatchewan
- Koala Place CYAC, Cornwall, Ontario
- SeaStar CYAC in the IWK Health Centre, Halifax, Nova Scotia
- Project Lynx, Whitehorse, Yukon
- Sophie's Place Child and Youth Advocacy Centre, Surrey, British Columbia

Since all six CACs received financial support through the Federal Victims Strategy (FVS), the study also examined their progress toward three key FVS objectives:

1. Increased access to victim services
2. Enhanced capacity to deliver appropriate and responsive victim services
3. Reduced financial and non-financial hardships for victims

METHODOLOGY

Researchers at Proactive Information Services Inc. collected data from three main sources:

1. CAC case files
2. Client interviews (child/youth victims and non-offending caregivers)
3. MDT interviews

Researchers conducted 111 MDT interviews (with 125 individuals), and 123 interviews with 26 child victims (aged five to 11), 17 youth victims (aged 12 to 19), five adults who had been victims as children (i.e. historical cases) and 75 non-offending caregivers.

CLIENTS AND CASES

Researchers studied 1,804 case files and found that:

- Victims were primarily female (67%).
- Almost half of all victims were aged 8 years or younger; the average age was 9.4 years.
- Over half of all victims were Caucasian (56%) and the second-largest group was Indigenous (17%).
- Offences were primarily sexual in nature (72%). Physical assault was the second-most common offence type (28%).
- The accused were primarily family relatives (64%) and most were adult males (64%).
- Police and child protection services were the two most common referral sources (together accounting for 94% of all referrals).
- The average elapsed time between first contact at the CAC and file closure was 187.7 days, and the median was 126.5 days.

FINDINGS

During the five years of the study, the CACs developed and changed; in many cases, MDT members reported that communication improved.

The study concluded that the diverse governance structures of the six CACs featured did not appear to influence service delivery, as long as communication was open, and the management board was knowledgeable and supportive. The study found that specific, clear documentation of agreements among partners (such as memoranda of understanding) facilitated better working relationships. These findings highlight the CAC model's flexibility.

The study included CACs with different physical locations. One CAC was located in a hospital, two shared locations with other agencies, and two had their own facilities. One CAC was a virtual site, meaning it did not have a single location, rather MDT members used many different methods to communicate.

A dedicated physical, child-friendly space is a core component of the CAC model and the study confirmed that a CAC needs a physical space to operate effectively. The virtual CAC was designed to serve as many people as possible across a region where potential clients are widely dispersed. However, despite a strong victim advocate program and a robust MDT response, both clients and MDT members expressed a preference for a single, physical, child-friendly location. Since the study concluded, Project Lynx has made child-friendly enhancements in some communities, finding appropriate spaces for interviews and adding comfortable furniture and décor.

The study confirmed that co-location of MDT members is also important. MDT members report better communication when team members work alongside CAC staff at the same site. While off-site MDTs can still perform well, they must develop trusting relationships, and well-negotiated and understood protocols, and hold regular case-review meetings.

The study found that the role of victim advocate is a key component of the CAC model. Such advocates support clients throughout the process and provide the glue that holds the MDT together. Caregivers identify the victim advocate as the most important CAC service for both themselves and their children. The victim advocate's impact on clients was evident:

> *The victim services responder is our rock through the whole process. I don't know what we would do without her.*
>
> *– Caregiver*

Forensic interviewing is an important CAC service. A forensic interview is a non-leading, non-suggestive interview that seeks to identify the facts of a case involving allegations of child abuse. Interviewers, specially trained police officers and child protection workers, ideally conduct joint interviews to gather information for criminal investigations, assess the safety of the child's living arrangements, and determine the need for medical or psychological treatment. Most

CACs use the Step-Wise Interview Technique,[3] although one site in the study uses Rapport, Anatomy Identification, Touch Inquiry, Abuse Scenario and Closure (RATAC).[4]

Two sites offer therapy dogs as an additional service, although this not part of the CAC model. The dogs help to calm young victims before forensic interviews and during court preparation. In at least one instance, a therapy dog provided support to a young CAC client waiting at the courthouse for legal proceedings to begin.

Among the 36 victims who provided overall ratings of CACs, 83% rated their experience as either "good" or "great." The two victims who rated their experience as "not good" were from the same site. One did not want to be videotaped during the forensic interview, and the other was concerned that the offender would be present. No victim gave a rating of "terrible."

CACS AND FVS OBJECTIVES

The study concluded that CACs were able to address noticeable gaps in the system. The CACs increased access to services for victims, including medical examinations. They provided training on how to work with child victims, made child-friendly environments available for forensic interviews, increased coordination and collaboration between partners that respond to reports of child abuse, and provided a consistent support person for children, youth and their families throughout their interaction with the criminal justice system.

FVS funding made it possible for these CACs to enhance capacity to deliver appropriate and responsive victim services by: supporting the coordination of services for children, youth and their families; hiring experts; and training MDT members. As the teams worked together, they shared expertise and enhanced their skills and knowledge. Some CACs provided training in forensic interviewing and/or child abuse and maltreatment. Some MDT members received training in cultural competency and diversity.

Overall, the CACs reduced both non-financial and financial hardship for clients. They reduced stress and re-victimization by providing a single, safe and child-friendly place for victims and their families to obtain information and support. Some sites provided emergency cell phones, bus tickets, taxi slips and/or food vouchers. Staff also helped clients to complete applications for government support (e.g. housing, counselling services).

Sites also reduced non-financial hardship by providing a single person – the victim advocate – who offers emotional support, information, referrals to services and/or assistance navigating intimidating systems. This reduced stress and saved time, since families did not have to deal with multiple people. As one caregiver explained: "It was a life saver. I would have lost my mind without them."

LESSONS LEARNED

The following were identified as lessons learned:

- **Clients and MDT members need mental-health services.** Only two CACs provided on-site mental-health services. On-site and off-site services were both described as a "patchwork" of programs, with long wait lists, and gaps in services for children/youth and for specialized adult counselling. Working with victims of abuse can take a toll on the mental health of service providers, but there was limited support for MDT members coping with vicarious trauma, Post-Traumatic Stress Disorder (PTSD), and/or burnout, which one interviewee noted can "eat you alive."

3 John C. Yuille, Barry S. Cooper and Hugues H.F. Hervé. 2009. The Step-Wise Guidelines for Child Interviews: The New Generation" in M. Casonato and F. Pfaffin, eds. *Handbook of Pedosexuality and Forensic Science* (Italy: Franco Angeli) at 11. The Step-Wise Interview Technique is widely used in Canada, the US and the UK to interview young victims and witnesses of sexual abuse, physical abuse and neglect. Interviewers follow specific steps, including building rapport, establishing the need for truth, allowing a free narrative, asking general questions and proceeding to more specific questions if required.

4 Jennifer Anderson et al. 2010. The CornerHouse Forensic Interview Protocol: RATAC® *TM Cooley J Prac & Clinical L* 12:193 at 195. RATAC is based on the idea that each child is unique. Accordingly, interviews are tailored to each child's age and cognitive, social and emotional levels. Interviews are also semi-structured to allow for the child's spontaneity.

- **Clients want more information.** The interviews revealed some client frustration about the general lack of information. Only 27% of child/youth victims were told what was going to happen after the investigation concluded. Young victims were less likely than parents/caregivers to receive updates and to know whom to contact at the CAC. Clients expressed interest in learning more about the process in general and in the progress of their case in particular.
- **CACs need diverse staff and MDT members.** CACs benefit from having diverse staff and partners – both male and female, and members of local communities, including those who share similar religious and cultural backgrounds as clients. Clients mentioned that young girl victims appreciated being able to work with female staff, while one caregiver lamented the difficulty of finding a male counsellor for her son.
- **Privacy is important.** Private spaces are essential at CACs, but not every site had an adequate area. At one site, the victim advocate often had to speak to families in front of other people due to limited space, reducing clients' privacy. Clients at other sites also suggested adding soundproof walls, opaque doors, and/or drop-down shades to increase privacy.

INNOVATIONS

The flexibility of the CAC model allows for a number of innovative services. Notable services among the sites studied include:

- **Workshops/community education:** Several sites delivered workshops to families and professionals in the community on topics such as trauma, how to support child victims of abuse, dealing with vicarious trauma, helping kids develop better self-esteem, and navigating the criminal justice system. Other CACs hosted conferences and created caregiver handbooks.
- **Girls' groups:** One site offered workshops specifically for girls on self-care, self-esteem and healthy relationships.
- **Cultural competency:** Three sites added representatives of local First Nations to their MDTs to increase cultural competency, and one site offered smudging and case planning with Elders in a circle. A CAC that served a large immigrant and Sikh community required MDT members to attend yearly cultural-relations courses, and employed a South Asian victim advocate. While the CACs in this study served diverse populations, the need for culturally sensitive services at other CACs across Canada may vary.

CHALLENGES OF THE CRIMINAL JUSTICE SYSTEM

Although CACs alleviate many problems, they are not designed to address clients' biggest complaint: delays in the criminal justice system. Clients complained of frequent court adjournments and cross-jurisdictional issues. Many clients indicated that speedier resolutions would reduce hardship. However, while CACs assist investigations and court preparation, they have no influence over court delays and outcomes. As one caregiver observed: "[the CAC] is excellent, but in the end, it is not a people issue, it's a systems issue."

FUTURE RESEARCH DIRECTIONS

It should be noted that study findings are specific to the CACs reviewed and may not apply to others operating in Canada. It was difficult for the study to follow clients throughout their cases. In addition, it was difficult to recruit victims and family members for surveys and interviews. Some clients were deemed too vulnerable: some were understandably reluctant to talk about anything related to the trauma they had experienced.

Future research could compare the long-term outcomes experienced by Canadian CAC clients with those experienced by victims who go through the court process without accessing CAC services. It is difficult to measure whether CACs actually reduce trauma for clients, although this is among their goals. Other research could evaluate

the effectiveness of various trauma-reducing strategies at CACs, such as the use of support dogs and other initiatives.

The study is the first of its kind on CACs in Canada, and contributes greatly to what we know and understand about their development and growth. The full report, *Understanding the Development and Impact of Child Advocacy Centres (CACs)*, will be available from the Department of Justice Canada in 2018.

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RESTORATIVE JUSTICE: THE EXPERIENCES OF VICTIMS AND SURVIVORS

By Jane Evans, Susan McDonald and Richard Gill

"I started to feel fear in my everyday life that [the offender] might see me in the community and hurt me… I was happy to have a conversation with [the offender] to understand their perspective of what happened… telling [the offender] the effects that the crime had on me and hearing [the offender] take responsibility for their actions allowed me to start to move on."

– Victim participant in an Indigenous Justice Program

The above statement from a victim who participated in a healing circle in their Indigenous community, speaks about the impacts of both the crime and of participating in a restorative justice process. This article describes the preliminary findings of a study documenting research on the experiences of victims and survivors,[1] along with the impacts of their participation in restorative justice processes in five Indigenous communities across the country. This study helps to fill a gap in this type of research as it is one of the first studies to explore this in Canada in recent years.

THE RESTORATIVE JUSTICE APPROACH

Restorative Justice (RJ) is an approach that focuses on repairing relationships and the harm caused by crime while holding offenders accountable. It provides an opportunity for the parties directly affected by crime – victims and survivors, offenders and their communities – to identify and address their needs in the aftermath of a crime, and seek a resolution that fosters healing, reparation and reintegration, and prevents future harm (Zehr 2002).

RJ attempts to address the needs of all participants using a flexible, inclusive and humanistic approach. RJ respects and values the dignity and security of all parties. Although penalties can be part of RJ processes, punishment is not a primary goal. RJ processes are considered successful when they promote the dignity and well-being of all parties involved, help to repair relationships, where possible, and restore peace, and advance community safety and security. In Indigenous communities, RJ processes are often grounded in Indigenous legal traditions and are designed to reflect the culture and values of the communities in which they are situated.

EXISTING RESEARCH ON THE IMPACT OF RESTORATIVE JUSTICE FOR VICTIMS AND SURVIVORS

International research and evaluations of programs[2] in Canada have shown that RJ can improve victim satisfaction and generate positive mental health impacts for all participants, among other benefits.

Improve victim satisfaction, positive mental health impacts – A meta-analysis by Strang et al. (2013, 12) showed that victims and survivors who go through a RJ process are more satisfied about the handling of their case than those who do not go through an RJ process. The study also found that victims and survivors who go through a RJ process are more likely to receive an apology from the offender and to feel safer (Ibid.). Many victims and survivors have reported that the opportunity to participate in RJ and express themselves reduces their desire for revenge, and they would recommend the process to others (Umbreit et al. 2002; Wemmers and Canuto 2002; Ministry of Justice

1 Both terms "victim" and "survivor" are used in this article. Interview participants were given a choice as to how they wished to be identified; some preferred "victim" and some "survivor," so this article uses both terms.

2 Community-based justice programs supported through the Indigenous Justice Program are not included in these studies.

2011; 2016). Victims and survivors have also reported that after participating in RJ processes, they experienced psychological benefits such as decreased fear and anxiety about a new victimization, decreased anger, increased sympathy towards the offender (Strang et al. 2006), and in some cases, even a decrease in post-traumatic stress symptoms (PTSS) (Angel et al. 2014; Angel 2005). Some participants also reported experiencing positive changes in their physical health, in addition to positive psychological changes (Rugge and Scott 2009).

Research has shown that overall, participants were highly satisfied with the RJ approach and felt empowered by the process, compared to the approach of the mainstream criminal justice system to cases of serious crimes (Rugge, Bonta and Wallace-Capretta 2005; Clairmont and Waters 2015; Ministry of Justice 2016; 2011).[3]

Existing research also shows that while satisfaction rates are generally fairly high, victims have also expressed concerns about RJ. Victims have felt that their offender was not genuinely remorseful for what they had done or fully engaged with the process (Ministry of Justice 2011; Wemmers and Canuto 2002). This finding confirms the importance of offender's acceptance of responsibility before a RJ process is arranged. Victims have also expressed negative reactions when they have felt unprepared for the RJ process or felt that they received unclear information about what to expect (Wemmer and Canuto 2002). Some victims have expressed fear about saying what they really felt at the RJ process (Ministry of Justice, 2011). Other areas of concern have focused on victims' dissatisfaction when offenders do not follow through on what they agreed to do to make amends and victims are not contacted following the RJ process and provided with updates on what the offender has done (Ministry of Justice 2011).

Sherman and Strang (2007, 8-9) also found that RJ generally reduced crime more effectively with more serious (e.g. violent) rather than less serious (e.g. property) crimes, and RJ produced better results with adults than youth, and for crimes where victims are identifiable. Examples of these crimes would be personal injury or violent crimes such as assault, rather than property crimes such as shoplifting or vandalism.

Despite the international research and the evaluations of Canadian programs noted herein, empirical research on the impacts of RJ programs, especially for victims and survivors in Canada, remains limited overall.

A STUDY OF RJ PROCESSES IN SELECT CANADIAN INDIGENOUS COMMUNITIES

To help address this research gap, the Department of Justice Canada[4] (the Department) undertook a study in 2017 to examine the experiences and perceptions of victims and survivors who have participated in RJ processes through community-based justice programs supported by the Indigenous Justice Program (IJP), formerly known as the Aboriginal Justice Strategy.[5]

For more than 25 years, through the IJP, the Department has supported Indigenous community-based justice programs that use RJ processes and offer culturally relevant alternatives to mainstream justice processes in appropriate circumstances for non-violent, low risk offences. Operating since 1991, the IJP partners in a cost-shared relationship with all thirteen provinces and territories and is delivered by community justice workers across Canada. The supported programs incorporate the principles and processes of RJ alongside Indigenous legal traditions. The overarching goals are to decrease the overrepresentation of Indigenous peoples in the mainstream justice system (i.e. reduce the rates of crime, victimization and incarceration), and to enhance overall safety and well-being in participating communities. Given that the restorative justice practices

3 In this paper, "serious crimes" refer to those that would result in imprisonment upon conviction.

4 The project involved a collaboration between the Policy Centre for Victim Issues, IJP, the Department's Research and Statistics Division and the Department's Evaluation Division.

5 For more information on the Indigenous Justice Program, please consult Indigenous Justice Program.

and models are deeply rooted in Indigenous cultures and traditions, the programs reflect the individual needs of the communities (Department of Justice Canada 2016).

Past evaluations of the IJP have primarily focused on measuring the impact of their community-based justice programs on offenders and the community.[6] Although victims and survivors may have been included in some case studies conducted during these evaluations, this is the first study by the Department dedicated to examining the experiences of victim and survivor participants in IJP-supported RJ processes. The goal of the study is to gain a better understanding of the impacts of these programs on victims and survivors.

The study examined: various RJ processes (e.g. victim-offender mediation, family group conferencing, peacemaking circles, healing circles, and sentencing circles) along the justice continuum; the needs of victims and survivors; impacts of the programs on victims and survivors; and lessons learned and promising practices.

METHODOLOGY

This study followed an exploratory case study approach. The Department contracted Alderson-Gill and Associates to undertake data collection and reporting, and to work closely with the Evaluation Division. To guide this core research team, the Department established an advisory committee comprised of representatives from the Policy Centre for Victim Issues, IJP, Research and Statistics Division, provincial and territorial partners, and from the communities involved in the study.

Research Questions

Four interview guides were developed for the case studies (victims and survivors; program managers and staff; community members and; friends and families of victims and survivors) to address the following research questions:

1. What are the different RJ processes used in the case study programs? Who was involved and how were the processes delivered?
2. What are the experiences of victims and survivors who participated in an IJP RJ process?
3. What impact has participation in the selected IJP RJ process had on victims and survivors of crime?
4. What were the needs of victims and survivors of crime in the selected RJ process?
5. What are the lessons learned and best practices regarding victim participation in the selected IJP RJ processes?

Case Study Communities and Key Informants

IJP-supported programs that have RJ processes involving victims and survivors in a total of five communities in British Columbia, Saskatchewan, Ontario, Quebec and Nunavut were included in this study. The research team and advisory committee worked with the participating community-based justice program managers to develop ethics and consent forms, along with tailored interview guides and a strategy to recruit participants for the interviews. The research team then travelled to each community for two to five days to conduct in-person interviews. Between June and October 2017, the team interviewed:

- 17 victims and survivors;
- 19 professionals, including program managers and staff; and
- 27 community members, including elders and other participants in the RJ process.

6 In addition to including case studies in IJP-supported communities, the evaluations also examined the impact of the programs on offender outcomes, namely recidivism rates. The last evaluation in 2016 found that offenders who participate in IJP-supported programming were 43% less likely to re-offend than non-participants. See Evaluation of the Aboriginal Justice Strategy.

KEY FINDINGS

The following is a summary of preliminary findings from this study.

Nature of the RJ process

Although different RJ processes were included in the study, they all made efforts to include the victim. Other commonalities included: the participation of the community through local justice committees; Elders had a key role in the process; a recognition that personal and social factors may have contributed to the offender's behaviour and are important to include in the discussion.

Nature of victim and survivor participation

As with the nature of the RJ process, the involvement of victims and survivors can differ depending on the community-based justice program. The following is a description of the nature of participation that was similar between the five programs involved in the study. Referrals to a community-based justice program can come from the police, courts or a community member. In criminal cases, once a referral is made, a community justice worker contacts the victim or survivor to invite them to participate. Should they choose to participate, the community justice worker prepares them for the process during an in-person or telephone conversation. The community justice worker describes the RJ process in detail, listens to the victims or survivors' story, asks them about the impacts of the crime and their experience with the justice system, as well as what they hope to achieve from the RJ process. The community justice worker then organizes a circle and encourages victims/survivors to actively participate by describing what they experienced and what impacts they feel the crime had on them, their families and their communities. They are also invited to respond to comments from other participants and to discuss outcomes of the RJ process. In some cases, victims and survivors receive information about what has transpired since the circle.

Decision about whether to participate

Victims and survivors interviewed for the study indicated that they experienced a range of impacts as a result of the criminal event. These included: emotional trauma and fear; difficulties relating to friends and family; work tension and disruption; financial loss; and inconvenience. Although the impacts differed by individual, there was almost always a sense of lost trust and/or feeling of uncertainty. A lack of information from the criminal justice system compounded these feelings.

Community member participants interviewed also felt that their sense of security and well-being had diminished. In addition, many felt that the offenders' behaviour reinforced negative stereotypes held by Canadians about Indigenous people.

The victims and survivors identified a number of reasons why they participated in the RJ process. The most common factors identified were: their knowledge of the program; the level of fear involved in the case or that they felt towards the offender (i.e. victims and survivors who were very afraid of the offender were less willing to attend mediation or sentencing circles); level of seriousness of the crime (i.e. victims and survivors often chose not to participate when their case involved a minor crime); and an inclination to help the offender. The goals of participation often shifted as the victim became more involved during the process. There was often a mix of personal interest in achieving a result and a broader interest in realizing longer-term benefits for the offender and the community.

RJ preparation

Preparation for RJ processes differed by program. However, all of the staff interviewed indicated that the proper preparation of the offender and victim or survivor was key to success. The majority of victims and survivors interviewed indicated that they were satisfied with the quality of the preparation that they had received. However, three of the victims and survivors interviewed indicated they felt that a lack of preparation led to the failure of the RJ process.

Victims' and survivors' experiences of the RJ process

Victims and survivors considered processes successful when they felt that their views had been heard and had influenced the outcome (i.e. the plan that was developed). The participation of Elders was also often seen as key to success, as was the ability of all parties to speak and listen in a safe, structured environment. In a few cases, the victim or survivor felt that the offender was not truly engaged, highlighting the importance of proper preparation for each of the participants in the RJ process.

Victim and survivor satisfaction

Overall, the victims and survivors interviewed for this study indicated a high level of satisfaction with the RJ process. Those who felt that their process was not successful still indicated that RJ is beneficial, but may not have been the best approach for their particular cases. Satisfaction seemed to depend on an existing positive attitude toward RJ, as well as the quality of RJ preparation. Almost all victims and survivors recommended the use of RJ processes for others.

In addition, a few victims and survivors indicated that they would have liked to learn about the outcome of the plan developed during the process and whether the offender completed the plan. Two victims and survivors indicated that they would have liked it if the Crown had informed them when their cases had been referred back to the courts after the failure of the RJ processes.

RJ impacts

Most of the cases that used a RJ process resulted in victims and survivors feeling heard and respected. In some cases, victims and survivors reported feeling relief from fear and anxiety, while in more serious cases victims and survivors felt that they could at least start to address these feelings. In addition, most victims and survivors felt considerable satisfaction with the plans developed through the RJ process. Even in the small number of cases where the circle ended prematurely without any resolution, all but one victim or survivor said they still had faith in the RJ process even though, the offender failed to fully commit to the process in their case. In these cases, victims and survivors as well as the community justice workers agreed that preparation had been insufficient to ensure that these conditions existed before the process began. In cases involving more serious crimes, preparation and support for victims is especially important because of the greater emotional impacts of the crimes and the heightened risk of re-victimization.

Victims and survivors also believed that the follow-up after the RJ process was completed and the plan was put in place could be improved. Community-based justice program staff who were interviewed agreed and identified a number of challenges they face in providing more comprehensive follow-up, including the occasional difficulties in locating victims and survivors to provide follow-up. Some community-based justice program staff also indicated that they lack the resources needed to follow-up given the high volume of cases. In addition, when cases are referred back to court, the community-based justice program staff are no longer able to access information about offenders. This is an area where more research may be required to understand what limitations could restrict the level of follow-up possible.

CONCLUSION

It is important to remember that the findings from these case studies in the five Indigenous communities reflect the specific context of the community, the RJ processes and the facts of each case. Notwithstanding these limitations, this research provides valuable insights into the impacts of RJ processes on victims and survivors of crime in Indigenous communities. These insights align with the results of other research on the impacts of RJ processes on victims and survivors.

This exploratory study, as well as previous RJ research, illustrates the importance of adequately resourcing programs to ensure sufficient preparation for, and follow-up to, RJ processes. Strong preparation is essential for all parties involved – victims and survivors, offenders and communities. Best practices and lessons learned suggest that all parties need information to inform their expectations of the process, to understand how it operates and how a resolution can be reached. This type of preparation and follow-up takes time, resources and training for program staff.

The study found that community-based justice program staff consider follow-up to be very important, but challenging for a number of reasons. Certainly a key finding of this research is the importance of creating a structured environment where all participants feel safe to speak and feel they are heard.

The study provides valuable insights into the experiences of victims and survivors in RJ processes in IJP-supported communities. The research can help inform future work on RJ, IJP-supported programs and with victims and survivors of crime.

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THIRD PARTY RECORDS: A REVIEW OF THE CASE LAW FROM 2011–2017

By Carly Jacuk and Hassan Rasmi Hassan

The Department of Justice Canada has undertaken research on sexual assault, the criminal justice system and third-party records for decades (Busby 1998; 1997; 2000; McDonald, Wobick and Graham 2006), as well as more general research involving sexual-assault survivors and their criminal justice experiences (Hattem 2000; McDonald and Tijerino 2013; Lindsay 2014; 2014). In December 2012, the Standing Senate Committee on Legal and Constitutional Affairs published a report regarding its review of Canada's third-party records regime.

As recommended in the Senate Report, Justice Canada continues to monitor trends in case law regarding applications for third-party records. These applications, along with their outcomes, can be monitored through reviews of case law.[1] McDonald, Pashang and Ndegwa (2014) updated earlier studies of case law, by focusing on 2003 to 2010. This paper updates McDonald et al.'s (2014) study by reviewing cases from January 2011 to May 2017. The paper also outlines notable changes in the legal landscape, including Bill C-32 (*An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts*), which includes Parliament's 2015 amendments to the third party records application regime and the Supreme Court of Canada's (SCC) decision in *R. v. Quesnelle*.[2]

This article has four sections. The first provides background on applications for third-party records, including definitions of key terms and a history of the regime. The second section describes the methodology used to review relevant case law; sections three and four present results and conclusions, respectively.

1.0 BACKGROUND

In December 1995, the Supreme Court of Canada (SCC) ruled on issues arising from the application to produce third-party records in *R. v. O'Connor*[3] and *A. (L.L.) v. B. (A.)*.[4] Following this decision, Parliament amended the *Criminal Code* (through Bill C-46), adding sections 278.1-278.9[5] to codify the two-step process articulated in the Supreme Court's decision. Bill C-46 (also known as the *Mills* regime) came into force in 1997, was challenged on constitutional grounds in *R. v. Mills*,[6] and ultimately was upheld as constitutional.

The legislative regime specifies that, for all sexual offences, the defence is not entitled to disclosure of third-party records. However, the defence can apply to have the court compel a third party to produce certain records. These records include "any form of record that contains personal information for which there is reasonable expectation of privacy." The *Criminal Code* provides a non-exhaustive list of record types that require the defence to submit an application: "medical, psychiatric, therapeutic, counselling, education, employment, child welfare, adoption and social serves records, personal journals and diaries, and records containing personal information that is protected by law" (s.278.1). Note that records created for investigation or prosecution are not subject to applications for third-party records and that section 278.3 of the *Criminal Code* further limits the scope of applications. For offences that

1 Statistics Canada's Canadian Centre for Justice Statistics (CCJS) is responsible for the Integrated Criminal Court Survey (ICCS). Unfortunately, the ICCS does not collect statistics about applications for third-party records.

2 2014 SCC 46, [2014] 2 SCR 390.

3 [1995] 4 SCR 411.

4 [1995] 4 SCR 536.

5 *Criminal Code of Canada*, RSC 1985, c C-46.

6 [1999] 3 SCR 668.

are not of a sexual nature, the common law rules under *O'Connor* apply.

It is important to note that in application proceedings, the third party and the complainant both have standing and can be represented by counsel. While they are known as third party applications, records may also reside with the complainant and be known as "personal records," such as diaries.

The Legislative Framework for Third Party Records Applications

As noted, the *Mills* regime sets out a two-step procedure. Upon receipt of an application, a judge must determine whether to require the third party to produce the requested records for review. The judge can order production when three criteria are met:

1. the application meets the limiting criteria outlined in section 278.3;
2. the record is "likely relevant" to a trial issue or a witness testimony; and
3. production is necessary "in the interests of justice" (s.278.5(2)).

To determine whether these criteria have been met, the judge weighs the salutary and deleterious effects of a potential order on the accused's right to make a full answer and defence, as well as the salutary and deleterious effects of a potential order on a complainant's or witness' right to privacy and equality. The judge must consider eight factors (s.278.5(2)):

a. the extent to which the record is necessary for the accused to make a full answer and defence;
b. the probative value of the record;
c. the nature and extent of the reasonable expectation of privacy with respect to the record;
d. whether production of the record is based on a discriminatory belief or bias;
e. the potential prejudice to the personal dignity and right to privacy of any person to whom the record relates;
f. society's interest in encouraging the reporting of sexual offences;
g. society's interest in encouraging the obtaining of treatment by complainants of sexual offences; and
h. the effect of the determination on the integrity of the trial process.

The judge completes this first step at a hearing, in camera (s.278.4(1)). If the judge orders that the records be produced, the judge will review them and determine whether some or all of the records should be disclosed to the defence (s.278.6-278.7). In *R. v. Mills*, the SCC upheld the constitutionality of the new regime.[7]

Bill C-32: Victims Bill of Rights Act

The legislative regime governing third-party records changed in 2015, when Parliament enacted the *Victims Bill of Rights Act*,[8] which included the *Canadian Victims Bill of Rights* (CVBR),[9] and amended other Acts, including the *Criminal Code*.[10] Bill C-32 amended the *Criminal Code* to establish CVBR rights and protections. Amendments to sections 278.4(2), 278.5(2), 278.7(2), and 278.7(3) of the *Criminal Code* established the regime for third-party records.

The amendment to section 278.4(2) adds subsection 2.1:

> The judge shall, as soon as feasible, inform any person *[who has possession or control of the record and any other person related to the record]* who participates in the hearing of their right to be represented by counsel. [emphasis added]

7 [1999] 3 SCR 668.
8 Bill C-32, *An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts*, 2nd Sess, 41st Parl, 2015, cl 7 https://lop.parl.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?ls=c32&Parl=41&Ses=2&Language=E.
9 *Canadian Victims Bill of Rights*, SC 2015, c 13, s 2.
10 *Criminal Code of Canada*, R.S.C. 1985, c. C-46.

This means that victims have a right not only to counsel, but also to be informed of the right to counsel.

Second, Parliament amended section 278.5(2) and section 278.7(2) to include the personal security of the complainant or witness as one of the overall balancing factors that the judge must consider in determining whether to order production of the record(s) to the court[11] or disclose them to the defence,[12] respectively. Section 278.5(2) now reads:

> In determining whether to order the production of the record or part of the record for review pursuant to subsection (1), the judge shall consider the salutary and deleterious effects of the determination on the accused's right to make a full answer and defence and on the right to privacy, *personal security* and equality of the complainant or witness, as the case may be, and of any other person to whom the record relates. In particular, the judge shall take the following factors into account... [emphasis added]

The factors that should be taken into account and informed by the right to privacy, personal security, and equality of the complainant or witness were listed earlier (a-h).

Similarly, section 278.7(2) now reads:

> In determining whether to order the production of the record or part of the record to the accused, the judge shall consider the salutary and deleterious effects of the determination on the accused's right to make a full answer and defence and on the right to privacy, personal security and equality of the complainant or witness, as the case may be, and of any other person to whom the record relates and, in particular, shall take the factors specified in paragraphs 278.5(2)(a) to (h) into account.

A judge must now consider the accused's right to make a full answer and defence, the right to privacy and equality of the complainant or witness, and the personal security of the complainant or witness.

Parliament also amended section 278.7(3) to include the security of the person as one of the balancing factors that the judge must consider in determining whether to place conditions on production/disclosure so that the interests of justice, in addition to the privacy, equality, and personal security of the complainant or witness, are protected.[13] Section 278.7(3) now reads:

> If the judge orders the production of the record or part of the record to the accused, the judge may impose conditions on the production to protect the interests of justice and, to the greatest extent possible, the privacy, personal security and equality interests of the complainant or witness, as the case may be, and of any other person to whom the record relates, including, for example, the following conditions:
>
> a. that the record be edited as directed by the judge;
>
> b. that a copy of the record, rather than the original, be produced;
>
> c. that the accused and counsel for the accused not disclose the contents of the record to any other person, except with the approval of the court;
>
> d. that the record be viewed only at the offices of the court;
>
> e. that no copies of the record be made or that restrictions be imposed on the number of copies of the record that may be made; and
>
> f. that information regarding any person named in the record, such as their address, telephone number and place of employment, be severed from the record.

11 *Bill C-32*, cl 8.
12 *Bill C-32*, cl 10(1).
13 *Bill C-32*, cl 10(2).

The Senate Report, published in December 2014, recommended several of these amendments based on the testimony it heard from witnesses (Senate Standing Committee 2012). Specifically, the Senate Report recommended the amendments made to sections 278.5(2) and 278.7(3), adding "the complainant's right to personal security" to the factors that the judge considers to determine if production or disclosure of third party records is required. Additionally, the Senate reported on the importance of independent counsel for the complainant in its discussion surrounding Recommendation 8, which sought to ensure that complainants knew they could make submissions during a hearing. Parliament's amendments to section 278.4(2) – adding subsection (2.1) – had this effect.

Notable case law post-2011

Since 2011, the SCC has released two notable decisions dealing with the third-party records applications regime: *R. v. Quesnelle*[14] and *R. v. Grant*.[15]

In the *Quesnelle* decision, the issue was whether police-occurrence reports should be disclosed to the defence if they are unrelated to the offence before the court, but relate to the same witness. The Court determined that these reports (i.e. related to other offences) are private and protected by the definition of "record" in the *Mills* regime. In other words, police-occurrence reports for other offences are not subject to the exclusion in section 278.1 of the *Criminal Code*. Rather, the exclusions are limited to police occurrence reports related to the offence at hand (s278.1), which fall under the *Stinchcombe* disclosure rules.[16]

In *Grant*, the SCC affirms its decision in *Quesnelle* by stating: "Legislative measures that restrict disclosure to protect the privacy interests of individuals implicated in criminal matters continue to apply."[17] This SCC statement can also be seen as affirming the amendments to the *Mills* regime under the *Victims Bill of Rights Act*.

There have been other notable decisions at the provincial level. In the early case of *Batte*,[18] the Ontario Court of Appeal (ONCA) determined the meaning of "likely relevant" in section 278.5(1)(b) of the *Criminal Code*. This section states: "the accused has established that the record is likely relevant to an issue at trial or to the competence of a witness to testify." This is one of three criteria the defence must meet for a judge to consider ordering the production of records. The 2012 Senate Report recommended that the ONCA's interpretation be codified and become binding on all Canadian courts (Senate Standing Committee 2012). However, Parliament has yet to codify an interpretation of "likely relevant" in this section.

2.0 METHODOLOGY

English decisions reported from January 1, 2011, to May 12, 2017, were retrieved from five different databases: Westlaw, CanLII, Quicklaw, the Canadian Abridgment Digest and the Canadian Encyclopedic Digest. Broad and narrow searches were conducted using the terms: "application /p record /p 278." The searches produced all decisions (n=144) that discussed an application, a record and the number 278 within the same paragraph. Other search options – such as including names of specific section 278 offences – produced narrower results.

14 2014 SCC 46, [2014] 2 SCR 390.
15 2015 SCC 9, [2015] 1 SCR 475.
16 *R v Stinchcombe*, [1991] 3 SCR 326. The Crown has a legal duty to disclose all relevant information to the defence, and relevance is discretionary.
17 2015 SCC 9 at 52, [2015] 1 SCR 475.
18 (2000), 49 OR (3d) 321.

Of the 144 English cases reviewed, 91 were relevant to third-party records applications (representing 63.2% of all cases). For each case, the study gathered information about:

1. relevant jurisdiction
2. level of court
3. the defendant
4. the complainant
5. the relationship between defendant and complainant
6. complainant's representation
7. outcome of the application; and,
8. reasons stated for denying or granting the application.

The study included only cases that involved sexual offences and that fell within the section 278 regime.

The French database, *la référence*, was also searched using search terms, "L.C.R. ET (1985) ET ch. ET C-46" for legislation cited; "278" for section of the Code; and "entre 01/01/2011 ET 12/05/2017" for time period. This search produced six cases in French; none were decisions about third-party records applications.[19]

3.0 RESULTS

a. Cases by Jurisdiction and Level of Court

Previous studies found that Ontario accounted for the majority of cases, with the remainder spread evenly across other provinces (McDonald, Wobick and Graham 2004; McDonald, Pashang and Ndegwa 2014). These previous studies counted cases with multiple decisions as one case.

The current study found similar results. In particular, Ontario cases comprised more than two-thirds of all cases (66 of 91 cases, 72.5%),[20] with the remainder from other provinces (27.4%). None of the four appellate cases also had a reported trial-level decision, so each decision included in this review was counted as one case. Table 1 details the findings according to jurisdiction and court level.

Table 1: Cases by Jurisdiction and Level of Court

Province/Territory	Trial Level	Appellate Level	Total Cases
Prince Edward Island	0	0	0
Quebec	0	0	0
Nunavut	1	0	1
Nova Scotia	2 (1 PC; 1 SC)	0	2
Saskatchewan	2	0	2
New Brunswick	3 (2 PC; 1 QB)	0	3
Newfoundland & Labrador	2	1	3
British Columbia	4	0	4
Manitoba	4	0	4
Alberta	8 (2 PC; 6 QB)	1	9
Ontario	61 (6 PC; 55 SC)	2[21]	63
Total	**87**	**4**	**91**

19 Six cases were found in French and of these, only one, *L.L. c. La Reine 2016 (C.A.)*, dealt with third-party records in a case involving sexual offences. This historical sexual-assault case was not included because the records themselves (from child protection and from community services) had been destroyed as in accordance with provincial legislation. One case in English from Quebec was found (*R. v. Tijinder Singh* 2011 QCCQ 1032) but excluded as it dealt with third-party records in the context of an O'Connor application. Thus, there are no reported decisions from Quebec in this review.

20 *R v Quesnelle* is a SCC decision that originated in Ontario and was counted as an Ontario case.

21 This number includes *R v Quesnelle* (SCC).

b. Offences Committed

All reviewed cases involve alleged offences under section 278.2 of the *Criminal Code*.[22] Though all of the cases involved charges of a sexual nature, sexual assault charges (s.271-273 of the *Criminal Code*) were the most common. Other common offences include sexual interference, invitation to sexual touching, and sexual exploitation. None of the cases involve charges for trafficking offences.[23] Generally, offenders were charged with more than one offence.

c. Records

As with previous reviews, the study found that the type of record sought most often was counselling records (42 out of 91 applications) (McDonald, Wobick and Graham 2004; McDonald, Pashang and Ndegwa 2014). In many cases, defendants requested multiple records, leading to a total of 127 records studied. More than half of all requests involved either the complainant's counselling or medical records (64/127). Table 2 presents the number of requests for each type of record.

Table 2: Type of Records Requested by Defendants

Type of Records	No. of Cases
Custodial reports	2
Testimony	3
Insurance reports (public and private)	4
School records	7
Personal records (diaries, cellphone records, sexual history, internet chats)	9
Other social services records	11
Occurrence reports[24]	12
Child protection records	15
Medical records, including addiction	22
Counselling records/Therapeutic records, including psychiatric	42

n=127 because many cases included defendants seeking multiple records.

d. Location of Records

In general, the requested records were in the possession of a single party; however, in some cases, multiple parties possessed the requested records. In other cases, the defence already had the records and were not subject to the s.278 disclosure regime as a result.[25] The SCC has distinguished between records that are subject to "compelled production" and those that are not, however. As a result, cases subject to "compelled production" (e.g. Children's Aid Society records, but not private diaries) are still subject to court order under s.278.1, even if they are already in the (lawful or unlawful) possession of the defence.[26] Without a court order under this regime, the records cannot be used in court. Table 3 presents the locations of requested records; note that many

22 The offences listed under section 278.2 of the Code are: sexual interference (s.151); invitation to sexual touching (s.152); sexual exploitation (s.153); sexual exploitation of person with disability (s.153.1); incest (s.155); anal intercourse (s.159); bestiality (s.160); parent or guardian procuring sexual activity (s.170); householder permitting prohibited sexual activity (s.171); corrupting children (s.172); indecent acts (s.173); keeping common bawdy-house (s.210); transporting person to bawdy-house (s.211); stopping or impeding traffic (in relation to offering, providing, or obtaining sexual services for consideration (s.213); sexual assault (s.271); sexual assault with a weapon, threats to a third party or causing bodily harm (s.272); aggravated sexual assault (s.273); trafficking in persons (s.279.01); trafficking in persons under the age of 18 years (s.279.011); material benefit – trafficking (s.279.02); withholding or destroying documents – trafficking (s.279.03); obtaining sexual services for consideration (s.286.1); material benefit from sexual services (s.286.2); and, procuring (in relation to commodification of sexual activity (s.286.3).

23 Four cases were excluded because they did not specify the type of sexual offence.

24 These occurrence reports related to previous allegations made by the same complainant rather than to the current charges before the court.

25 *R v Shearing*, 2002 SCC 58, [2002] 3 SCR 33.

26 *R v F (H)*, 2017 ONSC 1897.

complainants' personal records are in the "unspecified location" category.

Table 3: Location of Records

Location	No. of Cases
Social services, including Children's Aid Society	36
Doctor/health centre	24
Police/RCMP	22
Other: insurance (public/private), government, correctional worker/institution, court, defence	21
Counsellor	15
Unspecified	12
School/daycare	9
Crown	8

e. Party Characteristics

Consistent with previous studies, most complainants were female, most defendants were male and the two parties had an existing prior relationship. Furthermore, nearly half (55/118) of all complainants were minors at the time of the alleged offences.

i) Information about Defendants

Information collected about defendants includes gender, age and occupation. Information about the defendant's gender was available for 78 of the 91 cases reviewed: in all but one of these cases, the defendant was male. The only case involving a female defendant is *R v Lavigne*. In 58 of the 63 cases that report age, the defendant was an adult; in five cases, the defendant was a minor. Defendant age was not reported in 30 cases. Only 12 of the 91 cases report the defendant's occupation. Among these were two teachers, two students, and one doctor, drug dealer, horse farmer, paramedic, roofer, Roman Catholic priest, swimming instructor and alleged Hell's Angels member. See Tables 4 and 5 below.

Table 4: Defendant Characteristics – Gender

Gender	No. of Defendants
Male	77
Female	1
Unreported	13

n=91

Table 5: Defendant Characteristics – Age

Gender	No. of Defendants
Male	77
Female	1
Unreported	13

n=91

ii) Information about Complainants

Information collected about complainants includes gender, age and indication of mental illness or physical or mental disability. Of the 80 cases that identified the complainant's gender, 69 involved at least one female complainant, and only 13 involved at least one male complainant.[27] Of the 69 cases involving a female complainant, 12 cases involved multiple female complainants. In total, there were 82 female complainants and 14 male complainants. Complainant gender was not reported in 11 cases that involved a total of at least 22 complainants.[28] See Table 6.

27 This adds up to more than 80 because two cases involved both male and female complainants.

28 For cases that did not report number of complainants, it was assumed there was a single complainant.

Table 6: Complainant Characteristics – Gender

Gender	No. of Complainants
Female	82
Male	14
Unreported	22

n=118 because many cases involved multiple complainants.

Fifty-six cases reported complainant age and 35 cases did not. In total, there were 57 minor complainants and 14 adult complainants. The age of 47 complainants was not specified. Among age-reported cases, 43 complainants were minors and eight were adults; in two cases, the alleged offences began when the complainants were minors and continued until they were adults. Three cases involved both an adult and a minor complainant. See Table 7.

Table 7: Complainant Characteristics – Age

Age	No. of Complainants
Minor	57
Adult	14
Unreported	47

n=118 because many cases involved multiple complainants.

Ten cases reported a complainant's mental illness[29] and/or mental or physical disability.

iii) Relationship between Defendant and Complainant

In 60 of 91 cases, it was possible to identify the relationship between the complainant(s) and the defendant with certainty. As with the previous studies (McDonald, Wobick and Graham 2004; McDonald, Pashang and Ndegwa 2014), this review found that most cases (n=54) involved prior relationships. Of these, almost three-quarters (37/54) involved family relationships;[30] 12 were either friends, acquaintances or in romantic relationships; and five cases involved professional relationships. The parties were strangers in six cases.

Table 8: Relationship Between Defendant and Complainant

Relationship Type	No. of Cases
Family	37
Friend, Acquaintance, or Romantic Relationship	12
Strangers	6
Professional Relationship	5

n=60

I. Representation for the Complainant

It was evident in all 91 cases whether or not the complainant had representation; in 51 cases, complainants had representation and in 39 cases, they did not. In one case, the complainant had representation at the first stage of the inquiry, but not at the second stage and so, this case is excluded from Table 9 below. Given the relatively small sample size (n=90), it was not possible to determine whether there was a statistical relationship between the complainant, representation and the outcome of the application.

Table 9 details the outcomes of applications for represented and unrepresented applicants. The application outcome figures refer only to cases that deal with disclosure at the second stage of inquiry and decisions where production was denied at the first stage (77 cases). The study excluded 14 cases: 12 because applications had been granted at the first stage of inquiry but what happened at the second state was unclear; one because the court adjourned; and one because the complainant had representation only during

29 The mental health category does not include addictions.

30 Includes biological, adoptive, and step family. In one case, the complainant's mother's romantic partner (the alleged offender) lived in the same house as the complainant and this relationship was considered family.

the first stage. This creates discrepancies between the total numbers of cases.

Table 9: Complainants' Legal Representation and Outcome of Applications

Represented		Unrepresented	
51		39	
Application Granted	Application Denied	Application Granted	Application Denied
16	24	15	22

g. Outcome of Applications and Reasons Provided

A judge can order that all or some third-party records be produced, deny disclosure of the records entirely, or order that the records be produced for review before deciding whether they will be disclosed to the defence in full, in part, or not at all.

In the cases studied for this review, 14 third-party records were fully disclosed, 13 records were partially disclosed, and 45 applications were denied in full (i.e. none of the requested records were disclosed). Six judges ordered that records be produced for review, but the outcome of the second-stage disclosure inquiry was not reported. Table 10 details these findings. Cases where the court did not specify that some records should be redacted or excluded are counted as being fully disclosed.

Table 10: Outcomes of Applications

Granted			Denied
Fully	Partially	First Stage Only	
14	13	6	45

Table 10 includes the case where the complainant was represented at only one stage.

h. Reasons

Section 278.5(2) of the *Criminal Code* requires judges to consider eight specific factors. Table 11 indicates which factors judges cited as influencing their decisions. Note that in almost all cases reviewed for this study, judges cited multiple factors. In some cases, judges cited different factors to justify disclosing only some records. In *R. v. Fiddler*,[31] for example, the judge considered certain factors for one record and no factors for another record.

Table 11: Factors Considered by the Courts

Factors Considered from s 278.5(2)	No. of cases
a. The extent to which record is necessary for the accused to make a full answer and defence	21
b. The probative value of the record	15
c. The nature and extent of the reasonable expectation of privacy with respect to the record	21
d. Whether the production of the record is based on a discriminatory belief or bias	2
e. The potential prejudice to the personal dignity and right to privacy of any person to whom the record relates	17
f. Society's interest in encouraging the reporting of sexual offences	4
g. Society's interest in encouraging the obtaining of treatment by complainants of sexual offences	1
h. The effect of the determination on the integrity of the trial process	6
General Reference	5
Other: fishing expedition, relevance to issue at trial, necessary	23
Other: interest of justice, reliability and credibility of complainant	19
Other: equality	3
No reference to s. 278.5(2) factors	13

31 *R v Fiddler*, 2012 ONSC 2539, 101 WCB (2d) 109.

4.0 CONCLUSION

This review examined 144 cases dating from January 1, 2011, to May 12, 2017; 91 of these cases featured applications for third-party records and were examined further. Although case law reviews are limited in their ability to identify how applications function at the trial level, they can help to identify trends in Canadian jurisprudence.

The findings of this review are consistent with previous studies: defendants and complainants usually had a prior relationship; most complainants were female minors, while most defendants were adult males.

Of the eligible cases in this study, 33 applications were granted at least in part, and 45 were denied (n=-78). When excluded cases (i.e. the 12 cases where production was granted at the first stage but the second stage was unreported; and the case where the complainant had representation at only one stage) are added to the granted category, the total numbers of applications granted and denied are almost equal (46 granted, 45 denied).

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VICTIM – RELATED CONFERENCES IN 2018

Trauma-Informed Sexual Assault Investigation and Adjudication Institute
January 9 – January 12
Austin, TX, USA
http://events.r20.constantcontact.com/register/event?oeidk=a07eebzr3po3897b682&llr=g6e56arab

Southwest Conference against Trafficking
January 11 – 13
Ontario, CA, USA
http://www.swcat.org/

NASPA Well-being and Health Promotion Leadership Conference
January 18 – 20
Portland, OR, USA
https://www.naspa.org/events/2018scwhpl

The 32nd Annual International Conference on Child and Family Maltreatment
January 28 – February 2
San Diego, CA, USA
http://www.cvent.com/events/the-32nd-annual-san-diego-international-conference-on-child-and-family-maltreatment/event-summary-2694b17fed5e496e8773a7e98ff00175.aspx

Sex Trafficking in Indian Country National Conference
January 30 – 31
Agua Caliente, CA, USA
www.justice.gov/ovw/announcements

National Judicial Institute on Domestic Child Sex Trafficking
February 12 – February 14
Asheville, NC, USA
http://www.ncjfcj.org/DCST-February-2018

National Congress of American Indians Executive Council Winter Session
February 12 – February 15
Washington, DC, USA
http://www.ncai.org/events/2018/02/12/2018-executive-council-winter-session

NASPA Student Affairs Administrators in Higher Education Annual Conference
March 3 – March 7
Philadelphia, PA, USA
https://conference2018.naspa.org/

Campus Safety and Violence Prevention Forum
March 5 – March 8
Portsmouth, VA, USA
https://www.dcjs.virginia.gov/content/2018-campus-safety-and-violence-prevention-forum

Conducting Child Abuse Investigations
March 5 – March 9
Portsmouth, NH, USA
https://ncjtc.fvtc.edu/training/details/TR00000080/TRI0005728/conducting-child-abuse-investigations

National Conference on Bullying and Child Victimization
March 7 – March 9
Reno, NV, USA
http://www.schoolsafety911.org/event05.html

34th International Symposium on Child Abuse
March 19 – March 22
Huntsville, AL, USA
http://www.nationalcac.org/symposium-about/

Canadian Domestic Violence Conference 5
March 20 – March 23
Halifax, NS, Canada
https://canadiandomesticviolenceconference.org/

12th Annual Girl Bullying and Empowerment National Conference
March 23 – March 25
Orlando, FL, USA
http://www.stopgirlbullying.com/

International Conference on Sexual Assault, Domestic Violence, and Gender Bias
April 3 – April 5
Chicago, IL, USA
http://www.evawintl.org/conferences.aspx

16th Annual Freedom Network USA Human Trafficking Conference
April 4 – April 5
Denver, CO, USA
https://freedomnetworkusa.org/training/conference/

Alberta Provincial Victim Service Conference
April 5 – April 7
Banff, AB, Canada
https://www.victimserviceconference.com/home.html

Restorative Justice Facilitator Training
April 10 – April 12
Vancouver, BC, Canada
https://ca.ctrinstitute.com/workshops/restorative-justice-facilitator-training-april2018/

2018 WVCAN Conference Sponsorship
April 11 – April 12
Morgantown, WV, USA
http://www.eventupon.com/event/2018-wvcan-statewide-conference/16166637

No More Harm National Conference
April 12 – April 13
Melbourne, Australia
https://nomoreharm.com.au/

36th Annual Protecting Our Children National American Indian Conference on Child Abuse and Neglect
April 15 – April 18
Anchorage, AK, USA
https://www.nicwa.org/conference/

15th Hawai`I International Trauma Summit: Preventing, Assessing And Treating Trauma Across The Lifespan
April 16 – April 19
Honolulu, HI, USA
http://www.ivatcenters.org/hawaii-summit/

Conference on Crimes Against Women
April 16 – April 19
Dallas, TX, USA
http://www.conferencecaw.org/

Multidisciplinary Team Response to Child Sex Trafficking
April 23 – April 26
Hampton, VA, USA
https://ncjtc.fvtc.edu/training/details/TR00000142/TRI0005705/mec-mdt-response-to-child-sex-trafficking

12th Annual Every Victim, Every Time Crime Victim Conference
April 24 – April 25
Bryan, TX, USA
http://www.evetbv.org/

18th Annual International Family Justice Conference
April 24 – April 26
Fort Worth, TX, USA
http://www.cvent.com/events/18th-annual-international-family-justice-center-conference/event-summary-3cb59111da0b4daf88c2fed27ebcdb53.aspx

2018 Association for Death Education and Counselling Annual Conference
April 25 – April 28
Pittsburgh, PA, USA
https://www.adec.org/

2018 Texas Association Against Sexual Assault Conference
April 30 – May 2
South Padre Island, TX, USA
http://taasaconference.org/

International Institute for Restorative Practices Canada Conference
April 30 – May 2
Toronto, ON, Canada
http://toronto2018.iirp.edu/

Washington Coalition of Sexual Assault Programs 2018 Annual Conference
May 1 – May 3
Kennewick, WA, USA
http://www.wcsap.org/2018-annual-conference

Trauma-Focused Cognitive Behavioral Therapy Training
May 2 – May 4
Huntsville, AL, USA
http://www.srcac.org/tf-cbt/

ICCLVC 2018 : 20th International Conference on Criminal Law, Victims and Compensation
May 3 – May 4
Rome, Italy
https://waset.org/conference/2018/05/rome/ICCLVC

Colorado Advocacy in Action Conference
June 4 – June 6
Vail, CO, USA
http://coloradoadvocacy.org/

2018 Crime Victim Law Conference
June 7 – June 8
Portland, OR, USA
https://www.eventbrite.com/e/2018-crime-victim-law-conference-tickets-37020034921?mc_cid=c9c30e00a3&mc_eid=8cb88e4c02

The 16th International Symposium on Victimology
June 10 – June 14
Hong Kong SAR
http://www.worldsocietyofvictimology.org/wsv-events/victimology-symposium/

School Resource Officer Training Conference
June 12 – June 14
Appleton, WI, USA
http://ncjtc.fvtc.edu/training/details/TR00000091/TRI0005516/school-resource-officer-trainin

American Professional Society on the Abuse of Children Annual Colloquium
June 13 – June 16
New Orleans, LA, USA
https://www.apsacohio.org/25th-annual-colloquium

10th Annual International EFRJ Conference: Expanding the Restorative Imagination & Restorative Justice between Realities and Visions in Europe and Beyond
June 14 – June 16
Tirana, Albania
http://www.euforumrj.org/events/efrj-conference-2018/

Wyoming's Joint Symposium on Children & Youth – Crimes against Children & Children's Justice Canada
June 26 – June 28
Cheyenne, WY, USA
https://www.wyojscy.com/

30th Annual Crimes against Children Conference
August 13 – August 16
Dallas, TX, USA
http://www.cacconference.org

44th NOVA Annual Training Event
August 20 – August 23
Jacksonville, FL, USA
https://www.trynova.org/jax18/

23rd International Summit on Violence, Abuse and Trauma
September 5 – September 9
San Diego, CA, USA
http://www.ivatcenters.org/san-diego-summit

Voices Rising: 17th National Conference on Domestic Violence
September 23 – September 26
Providence, RI, USA
https://ncadv.org/conference

Trauma-Focused Cognitive Behavioral Therapy Training
October 10 – October 12
Huntsville, AL, USA
http://www.srcac.org/tf-cbt/

Being Trauma Informed
October 16 – October 18
Anchorage, AK, USA
https://www.nativewellness.com/events.html#TRAUMA

30th Annual COVA Conference
October 28 – October 31
Keystone, CO, USA
http://www.coloradocrimevictims.org/cova-conference.html